

App. F. IX-4

Previous References.

Ch 215-06
(1-2)

Later References.

1948
(Law)

Law File No. 34-38
Serial Nos. 1-6

PRESERVED

GENERAL AND REVENUE SECRETARIAT

Serial Nos.

Six only

8

Part B for January 44.

SUBJECT

Macaron's case Question of his Nationality

Serial
No.

NO references on this subject are available here. On the other hand, one Herbert Mitchell was charge-sheeted before the justice of the Peace, for a similar

case against Maccabean

1189
Escape from jail

of 193

General and Revenue
Secretariat

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No.

agency which has been dealt with
in Law file No. 182-37.2, 1-2, placed
below.

2) The records of the case ^{against Maccabean} may
be called for from the D. M. Bangalore
and then the matter examined. A
draft is put up for orders.

3) Done now
BMR
19.8

Forwarded to the D. M., B'lore

No. P 10.37, dt 19.8.38

From

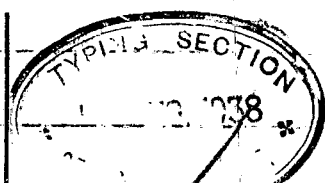
The Dist Magt

B'lore

Letter no. T. P. R. 76/38-39, dt 23.8.38
Forwards the records relating to the
trial of Maccabean for an offence under
Sec: 204 of the City Magt, B'lore.

4) The Order Sheet, Charge Sheet,
(T. P. R.), the Statement of the accused,
and the judgment, and other relevant
papers of the case file, do not contain
any information to say that Maccabean
was a European British Subject.

5) Among the papers in the file



Sub B (25.8.38)
19.8.38

As instructed by
the Asst. Secy, I
phoned to the
Judicial Magt of
D. M's office
to expedite the
despatch of the
records immediately.

B
23/8/38

(Case against Maccaram)
Question of his nationality.
1187

General and Revenue
Secretariat

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2215

of 193

[App. F. III-2]

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there is a memo from the justice of
the Peace (to whom the City Magt. might
have made a reference), saying that "there
is no prima facie evidence that
the accused mentioned in the Charge-sheet
herewith is a European British Subject."
see Flag A.

b) This may perhaps be taken as
a most reliable information and the
Residency informed accordingly.
Submitted for orders.

B/
24/8

7) One Maclaren, who was
an undertial prisoner in the Central Jail
Bangalore, attempted to break out of the Jail
He was prosecuted before the City Magistrate
Bangalore for an offence under Section 22
of P.C. and sentenced to one month's rigorous
imprisonment.

8) The Residency wishes to be
informed if the information in the possession
of the City Magistrate shows that Maclaren was a
European British subject and if so, what
action they propose to take in regard to his
conviction by the City Magistrate.

9) It appears from the letter
from Residency that in a case in the C & M. Court

It is said MacLaren stated that he was born in Ireland, and that he was therefore tried as a European British subject and on that account the Presidency raised the question of the alleged illegality of the trial of a European British subject by the City Magistrate.

i) It may be said at the outset that the records of the case show that the charge sheet against MacLaren was placed in the Court in front of a Justice of the Peace (Sir Charles Tothman) and the latter returned the charge sheet on the ground that there was no prima facie evidence that the accused was an European British subject. (See page A). It may safely be presumed that the Justice of the Peace must have so claimed jurisdiction after an inquiry into the status of the accused as a European British subject.

ii) The charge sheet was subsequently placed before the City Magistrate, Bangalore, with the result that the accused was convicted.

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12) The records do not show even that the Magistrate asked the accused about his status or that the accused claimed the status and offered to prove it.

13) It is true that the Magistrates in Mysore are incompetent to enquire into or try any charge against an European British subject. But before a person can be held to be an European British subject, he must prove that he comes within the term of that definition and to do that it is necessary that he should both make the claim and prove it. There cannot be such a status without a claim and a decision that it exists. In the present case no such claim was made by the accused.

14) There seems to have been a difference of opinion on the question whether any duty ^{is} cast on a Magistrate to ask the accused person categorically if he ^{is} an European British subject. The Calcutta High Court held in 6 Cal 83, that before an European British subject can be considered to have waived the privilege

his rights were distinctly made known to him to enable him to exercise his choice and judgment whether he would or would not claim those rights. On this matter it was held by the Punjab High Court that it is not the duty of a Magistrate to ask an accused person categorically whether he claims his right as a European British subject, much less his duty to explain his right to him as such a subject. The Magistrate appears to presume that persons entitled to privilege know of its existence and that if he desires to assert it, he will assert it.

— (5) The High Court has held in the case of Charles Theobald (H.L. by H.C.R. 148 or page 162) that since the exemption in sub-section 2 of section 1 of the Code of Criminal Procedure is applicable only to European or British subjects, it is in the nature of a special pleaousting the ordinary jurisdiction of the Court and the onus

1293 Case against Raccaran
(Question of his status)

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The emphasis lies on the person who sets up the claim that he is a European position subject. In the present case after the charge sheet was ~~presented~~ returned by the Justice of the Peace on the ground that there was no prima facie evidence that the accused was an European position subject, the City Magistrate has reason to believe that the accused brought before him was not an European position subject. If the accused wanted to claim the privilege, it was for him to make the claim and prove it; but he did not choose even to urge such a claim.

16) In these circumstances ~~it cannot be maintained~~ the proceedings before the City Magistrate cannot be said to have been without jurisdiction.

17) I may also submit that this is not a matter where the Govt need interfere, and that it is for the accused, if he feels aggrieved by the order of the City Magistrate, to take the matter in appeal.

18) It is noted in the Police charge sheet that "it has been ascertained from the accused that he is an Irishman". The police thought placed the charge sheet before a J.P. (Sir Charles Toddhunter). He returned the charge sheet with the observation "returned as there is no prima facie evidence that the accused mentioned in the charge sheet hereunder is a European British Subject". If the accused thought fit he could have applied to the Madras High Court in revision of this order of the J.P. The charge sheet was then placed before the City Magistrate Bangalore who naturally had no reason to think that the accused was a European British Subject. He tried the accused & convicted. The accused did not put up the claim that he was a European Subject. As this is an exemption outside the ordinary jurisdiction of the Court, the onus is on the accused to set up & prove that he is a European British Subject. If the accused is aggrieved, he may appeal.

19) It is asked in the Residency letter whether the information in the

Case against Macaron. 1293
(Question of his status)

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Secretariat

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possession of the Govt of Mysore shows
That he is a European British Subject.
There is no such information in the
possession of the Govt.

20) A draft reply is put up.

21) If the Residency have definite information
that the a/cd is an Irishman & send no
particulars; The question of committing
the sentence under Sec 401 & Pro. Code
maybe considered as our Govts have
no jurisdiction for the trial of European
British Subjects.

Case against Maccaron
(Question of his status.)

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Law

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Serial
No.

From

The Secretary

to the Hon. the Resident

Bangalore.

Letter no. D.O. R. Dis. no. $\frac{F641-38}{R.O.1}$, 27-12-9-38

Enquires what the evidence before the
justice of the Peace was which ~~led~~
him to believe that Maccaron was not
a European British Subject, and whether
the evidence showed that he was not
a non-British European.

27) The question whether Maccaron
~~is~~ is a European British Subject or
not has been fully discussed in
paras 7 to 23 Supra, and the
Residency has been informed
accordingly (Vide Flag G.).

28) Now the Residency wants ^{in P.V.D} 2
information on the following:-

(1) What was the evidence before
the justice of the Peace which
led him to believe that Maccaron
was not a European British
Subject, and to refer the case
~~to~~ to the City Magistrate.

(2) Whether the evidence showed

1745

Case against MacCaran
(Question of his status.)

General and Revenue
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that he was not a non-British
European, so that, under the
existing arrangements the sanction
of the Hon. the Resident was not
necessary before proceedings against
him were instituted in the ci-
vil Magistrate's Court, Bangalore.

2?) There is no such information
in the possession of Govt. The justice
of the Peace may have to be written
in the matter.

Submitted for orders.

30) Kindly refer is invited to the re-
turn at paras. 8 to 16 in the file

31) Subd with 2 drafts as directed

copy
relg
mm

32) One draft - put up
one for approval

33) After an receipt of the
copies, the question will be further examined
and submitted for orders

Chief Secy

34) For perusal before issue.

1st member

15/9
14.9

15/9
15.9

15/9
15.9

35) 15/9 15.9

re against Maccaron 1745
(Question of his Status)

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To

The D.M.

B'lore

No. P. 1527, dt 16-9-38

Enquires whether there was any evidence
before the City Magt. that the accused
Maccaron was a non-British European
Subject.

To

~~Sir~~ Charles Todhunter

D.O. no. P. 1530, dt 16-9-38

Calls for the information required
by the Residency

From

Sir Charles Todhunter

Justice of the Peace

Mysore

D.O. no. G. 192/37-38, dt 21-9-38

States that he has made it a practice to
require the Police, when they ask him to take
ognizance of an offence, to produce some
prima facie evidence that the person whom
they wish to try is a European British
Subject, and that in the case of

Maccaron's case

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Maccaron no evidence was offered to the effect that he was such a subject.

37) As instructed by the Asst. Secy: ^{of 22-9-38}, I phoned to M. S. Rajagopala Jyengar, Judicial Head Munshi of the Bangalore D. C. office to send the records immediately. So far they have not been received. The receipt of the same may be awaited.

~~38)~~ In the circumstances reported by the justice of the Peace, a report from the I. G. of Police may have to be called for...

Submitted for orders.

39) The receipt from records may be awaited
BKR
26.9

From
The Dist. Magh.
Bangalore

Letter no. J. I. P. R. 116/38-39, of 23-9-38
wards a copy of letter from the City Magh.,
Bangalore, and states that there does not
seem to be any evidence before the City
Magistrate that the accused Maccaron was
non-British European Subject.

40) The Dist. Magh., Bangalore states

Maccaron's Case

34

of 1938.

General and Revenue
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that there does not appear to be any evidence before the city Magistrate to say that Maccaron was Non-British European Subject.

41) The city Magistrate, Bangalore has explained in his letter (Flag 0) the circumstances in which a charge sheet was placed before him. On the same lines a reply may perhaps be given to the Residency.

Submitted for orders.

27/9
27/9
42) Reference is invited to P-24 D No. I.

43) Sir Charles Todhunter writes that he has no recollection of seeing any charge sheet in the case of Maccaron alias MacLaren, and that his diary contains no reference in matter. He further adds that a charge had been presented, no defence was offered before him, beyond equivocal name of the accused, can appear that he was a European subject.

44) In these circumstances it is for consideration if the records of the case may be sent to Sir Charles.

1975/1973 Maccaron's Case

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A

Todhunter so that he may see the Cha
sheet and offer his further remarks, if any

BKR
27.9

Chief Secy)

45) A. Maybe done.

MS
30.9/38

46) Draft

BKR
30.9.38

47) Subd. with a draft D.O. for approval.

30/9

BKR
1.10.38

Chief Secy)

45) appd

MS
2/10

49) Jshu
BKR
2.10

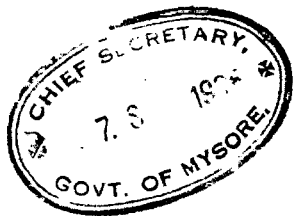
D.O. no P Camp 19, 3-10-38

From

Sir Charles Todhunter

D.O. no mil, dated 8-10-38

States in the circumstances mentioned that
it is the city Registrar that should be called
upon to explain, and suggests that the definition
of the "European British Subject" according to
Nyas Code be brought into line with the



British Indian definition

Reference paras 43 to 45 Supra

(50) In this letter also Sir Charles Toddhunter writes that he has no recollection of seeing the charge sheet in this case. He further states that the city Magistrate should be called upon to explain in the matter

51 kind reference is invited to Flag c in which the learned city Magistrate has detailed the circumstances in which he tried Maccora as an ordinary prisoner.

52 Sir Charles Toddhunter suggests that the definition of "European British Subject" as contained in the Mysore Co. be brought into line with the British Indian definition. ^{as there is some difference.} This question may perhaps be taken up for consideration after the main question is decided.

53 It is respectfully submitted that some instructions to the Police seem to be necessary in view of the observation made by Sir Charles Toddhunter namely, that the Police do not always examine this question sufficiently closely.

Submitted for orders

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54) Reference is invited to paras 43 to 45 supra. Even after perusing the records of the case, Sir Cha Todhunter writes that he has still no recollection of seeing the charge sheet in the case and adds that assuming that the charge sheet was brought to him, the accused was certainly not produced before him.

55) The Residency raises the question that even a waiver by a European British Subject does not confer jurisdiction on the Mysore Court. This position is not disputed and our previous reference to the Resid does not proceed on the ground that there was waiver on the part of the accused.. The plea of waiver assumes that the person waiving his special right is European British Subject. But in this case the very fact of the accused being a European British subject is in issue. As laid down in 41 My. H.C.R. 148 (at page 162) the exemption in Section 1(2) of the Criminal Procedure Code is in the nature of a special plea ousting the ordinary jurisdiction of the Court and the onus of proving that the accused comes under exemption lies on the person who sets up a claim that he is a European British Subject. No such claim was made or proved by the accused in the City Magistrate's Court and therefore there was no question of waiver by the accused. The attention of the Residency may perhaps be invited to the above decision and also the decision in 8 MY. C.C.R. 408.

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56) The Residency next raises the question that if the evidence showed that the accused was a non-British European, the sanction of the Hon'ble the Resident was at least necessary before the accused was tried by the City Magistrate. It is true, according to the existing rule of practice, that in every case in which a criminal charge is preferred against any European, not being a European British subject or American in the Province State, the Residency has to be consulted with a view to the court by which the case should be tried being determined. (See Criminal Rules of Practice Volume I, Page 149).

57) The District Magistrate was asked if there was any evidence before the City Magistrate that the accused was a non-British European subject. The explanation of the City Magistrate (Flag C) is, however, silent on the point. It looks as though this aspect did not strike at the moment, and that when the Justice of the Peace disclaimed jurisdiction on the ground that the accused was not a European British Subject, the City Magistrate proceeded to try the accused, as he would try other ordinary prisoner. There was also nothing to suggest to the City Magistrate that the accused was an American or a non-British European Subject.

Maccaroni Case

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[App. F. III-2]

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58) The first query in the Residency letter is, what was the evidence before the Justice of the Peace which led him to believe that Maccaron was not a European British subject. The Justice of the Peace has stated in his first letter that no evidence was adduced to the effect that the accused was a European British subject beyond his equivocal name. In his second letter he has stated that on his asking for proof whether the accused was a European British subject, the Police appeared to have placed him before the City Magistrate. He returned the charge sheet as there was no prima facie evidence that the accused was a European British subject. The Residency letter proceeds on the view that when an accused is placed before a J.P., the J.P. should have evidence leading him to believe that the accused was not a European British subject before he can disclaim jurisdiction. This is not a correct position. Trial by a J.P. is a special privilege allowed to European British subjects as an exception to the general law. Consequently, if an accused claims the special treatment, he must establish by ^{affirmative evidence} ~~affirmative~~ proof that he is a European British subject. (6 Madras High Court Reports, 7).

59) If it is established either on the plea of the accused or otherwise that the accused is a European

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European British subject, the Mysore Courts are
deprived of jurisdiction under section 1, sub-section 2
of the Mysore Criminal Procedure Code.

(6) The next point urged in the Residency letter is
that, under Art. 16 of the Mysore Treaty, no Mysore
Court has any jurisdiction to try a European British
subject even if the accused does not make any claim
to be tried as a European British subject. This
proposition is no doubt correct if it is established
or known as a fact that the accused is a European
British subject. The case of Government ^{vs. B.G.} ~~vs. B.G.~~ Fuller
(X Mysore Chief Court Law Reports, 281) referred to
in the Residency letter is one of waiver. In that
case, the accused who was a European British subject
stated before the Court that he waived his privilege
and did not claim to be tried as a European British
subject. It was held by the High Court that the
Magistrate had no jurisdiction to try the case. The
present case is not one of waiver. The accused was
placed before a Justice of the Peace. No evidence
was forthcoming that he was a European British subject
and the accused did not plead it. Then he was placed
before the City Magistrate. Even then, he did not
plead any special privilege. And the Magistrate had no
reason to think that the accused was a European British
subject or a European or an American any more than that

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Secretariat

awFile No. 34 of 193 8.

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that he was an Anglo-Indian. Consequently, the trial proceeded as in any other ordinary case. This is a case of ~~the~~ being no proof that the accused was entitled to the special treatment. Even the Residency letters do not assert that the accused was a European British subject or other European.

(61) Art. 16 of the Mysore Treaty, section 1 (2) of the Criminal Procedure Code and the decision in X Mysore Law Reports, page 281, are all applicable to cases where it is proved or established or known that a particular accused is a European British subject. In ~~X~~ J.T. Halge, VIII Mysore High Court Reports, 408, it appeared ^{to be} a matter of doubt as to whether the accused was a European British subject and when called upon to prove that he was, he did not do so. In these circumstances it was held that it cannot be assumed that the accused was a European British subject and that it could not be said that ^{the} Mysore Magistrate had no jurisdiction to try the case. In 41, Mysore High Court Reports, page 148, in the case of Charles Theobald, the case of Government versus Fuller has been explained as relating not to alleged European British subjects but to European British subjects who are really ~~as~~ such and that the status of the accused as such must be established before he can claim the privilege of being tried by a Justice of the Peace.

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It was also held that since the exemption in sub-section 2 of section 1 of the Code of Criminal Procedure is applicable to only European British subjects, it is in the nature of a special plea ousting the ordinary jurisdiction of the Court and the onus of proving that ~~the~~ ~~accused~~ it comes under the exemption lies on the person who sets up the claim that he ^{is} a European British subject.

(6) The next query raised in the Residency letter is whether the evidence showed that he was not a non-British European so that under the existing arrangements the sanction of the Hon'ble the Resident was not necessary for proceedings before the City Magistrate. This is also a matter of absence of proof. The accused did not plead and the Magistrate had no evidence. There is no reason for him to think that the accused was a non-British European any more than that he was an Anglo-Indian.

(6) Under Art. 16 of the Treaty, our courts have no jurisdiction in respect of a European British Subject. If the Residency informs us that they are satisfied that this person is a European British subject, then we may agree to remit the sentence under section 401 of the Code of Criminal Procedure. This would be a matter of political expediency.

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64) The conflict of jurisdiction has become apparent since the accused ~~xx~~ has, in another case in the C & Station, claimed to be tried by a J.P. as being an Irishman and has been tried by the District Magistrate there and convicted. The accused appealed to the High Court of Madras who ^{appear to have} confirmed the conviction. In the Police charge-sheet in the City case, it is mentioned that it has been ascertained from the accused that he is an Irishman. This could have put the City Magistrate on notice to question him about his nationality. Even in the statement of the accused, his description under the heading "Race" has not been noted. All that is noted is "Christian Roman Catholic" under the heading "Religion". If the Magistrate had questioned him about his race or nationality, he would probably have elicited from him that he was an Irishman, and this should have led the Magistrate to consider the question of the nationality of the accused and the jurisdiction of the Court to try him. In cases of this sort where it may appear either from the charge-sheet or from the features of the accused that he may be a European British subject or a European, it is desirable that the Magistrate should question him about his nationality and satisfy himself that he has jurisdiction.

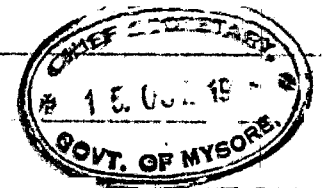
65) Sir Charles Todhunter has, in his letter, raised the question of the difference in wording in the definition of 'European British subject

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f 1938

between our Code and the British Indian Code. Th
words in our Code are 'born in the United Kingdom
of Great Britain and Ireland'. In the British
Indian Code the words are 'born in the British
Islands'. These words ~~are~~ were introduced in the Briti
Indian Code by the amendment of 1923 long before th
separation of Ireland. The words "British Islands
are a short term for Great Britain and Ireland.
There appears to be no difference therefore between
our code and the British Indian Code. At any rate
the wording in
according to our Code, an Irishman would be a
European British subject.

(b) Draft reply is put up.



3476
1716

General & Revenue
Secretariat.

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[App. F. III-2]

Serial
No.

From

The Secretary to the Hon^{ble} the Resident
D.O. No. 7641-38/R.O.I. dated 12th Jan
states that his plenary criminal jurisdiction
over European British Subjects in Mysore
vests in the Governor General in Council
as per Treaty. MU 16 and that it
is the obligation of the Govt. under this
Act to make such laws as will ensure that
European British Subjects are not tried by
the State Courts

Chief Secy's orders on the P.U.D

To "The position requires further examination
(2nd BTK)
This may be submitted for perusal in the
first instance - with refce to paras 58-69
of the notes supra.

71) P.U.D is for perusal.

There seems to be no need to amend any
of the laws. It is perhaps sufficient if a
circular is issued for the guidance of
the District Magistrates. ~~A draft~~
~~is being prepared for the District~~

Maccaroni's Case

4505
P

File No.
Law

of 1938.

General and Revenue
Secretariat

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No.

FEB 15 1939

6562

72) If approved, the file may be sent
officially to the High Court for the issue of
a circular to the Subordinate Courts
pointing out the provisions of Art 16 of the Mysore
Pact and Subsection (2) of Section 1 of the
C. P. Code and instructing that in cases
where it appears from the records before them
such as charge sheet etc or from the appearance
or statement of the accused that he may be
a European British Subject or non British European
or American, the Court should enquire
into the nationality of the accused & satisfy
itself that it has jurisdiction to proceed
with the trial.

Chief Secretary
(for Member)

C1.

14/2/39

73) 11/5 14/2 BKR 14/2

BKR 15/2

74) Nil

16/2/39

6/6

Forwarded, with compliments,
to the Registrar, High Court, for favour
of necessary action and return.

BKR Ramakrishnaiah

16.2.39

Dr. Chief Secy)

Serial
No.

HIGH COURT OF MYSORE, BANGALORE.

Dated 5th April 1939.

Dr. Bis 952/38-39

Returned with compliments. A copy of Criminal Circular No. 284, dated 4th April issued by the High Court on the subject is enclosed for the information of the Government.

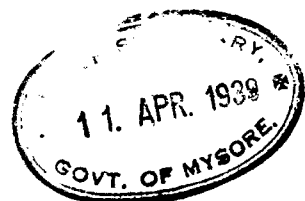
In regard to the difference between the definitions of "European British Subject" in Mysore Code and in the British Indian Code it will be seen that the definition in the Mysore Code is in some respects wider and in some narrower than that in the British Indian Code. It is therefore suggested for the consideration of the Government that it would be well to introduce the British Indian definition in Mysore.

J. Shanmugas
REGISTRAR.
ms



Reference Paras 72 to 74.

The circular issued by the High Court is for perusal.



Asst Secy

Boxer
11-4-39

Chief Secy

2nd Member

dewan

Boxer
11/4
ms
13-4

Cham ms 6

taken as app. to

in H.C.

WD 02533-50,000-GPB-8-7-30

ms
13-4-39

15-4

9722

NOTE—Contn. Sheet

Read H. ... of Registrar
in High Court. The definition

The 'Indian' & 'Pr. Code' in
near British Indian may be adopted
in the Code as suggested. Necessary
action may be taken.

Imme

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat

Bangalore, Dated, 19th August 1938.

No. P 1037

From

Additional
The/Chief Secretary to the Government of His Highness
the Maharaja of Mysore.

To

The District Magistrate,
Bangalore District.

Sir,

I am directed to state that it has come to the notice of Government that a man named Maccaron alias Maclaren was convicted by the City Magistrate, Bangalore, of attempting to break out of the Bangalore Jail, and to request you to send immediately the entire records of that case for reference and ~~xxx~~ return.

I have the honor to be,

Sir,

Your most obedient servant,



For Additional Secretary to Government


TRM.2

Immediate

SUBJECT

.....

.....

Section *Law*

File No.

Serial No.

Diary No. of letter replied to

General and Revenue Secretariat

()

the 193 .

No. *P1037*To *The Dist Magt*
B'lore

Sir

Date of issue.....*19.8-38*Signed by.....*Mr. BKR*

List of enclosures.....

Copied by

Examined by.....

I am directed to state that ~~an~~ it has come to the notice of Govt, that a man named Kaccaron alias Kaccaren was convicted by the City Magt., Bangalore, of attempting to break out of the Bangalore jail, and to request you to send ^{using dist} ~~an~~ ~~early date~~, the entire record of that case for reference and return.

I have etc!

BKR

Immediate

In all future communications
please quote—

No. IL-B.R. 76/38-39.

Enc. Records.

1293738
P

OFFICE OF THE DISTRICT MAGISTRATE,
BANGALORE DISTRICT.

Dated Bangalore, the.....23rd..Aug.,.....1938

FROM

Abdul Aziz Khan, Esq., B.A.,
District Magistrate,
Bangalore District.



T. Kesavalengar, Esq., B.A.,
Chief Secretary to the Government of Mysore,
B a n g a l o r e.

SIR,

Subject:—

I have the honour to forward herewith the record

relating to the trial of Maccaron alias Macclarran for an offence under

C.C.No.1201/37-38 on the
file of the City Magistrate,
Bangalore.

Sec. 224, I.P.C. as desired by you

in your letter No.P.1037 dated 19th

August 1938.

I have the honour to be,
S i r ,
Your most obedient servant,


District Magistrate,
Bangalore District.

SUBJECT

Section

Law

File No.

34-38

Serial No.

2

Diary No. of letter replied to

D.O. No.

L1299

To

General and Revenue Secretariat

()

the

193

Date of issue *1-9-1938*

Signed by

Mr. B.T. K

List of enclosures

Copied by

Examined by

Please refer to your

D.O. R. No. *F 641-38* of the 18th inst
R.O. T

I am desired to say that the man
 named Maccaron alias MacLaren
 who was then an under trial prisoner
 in the Central Jail, Bangalore, attempted
 to break out of the jail. A charge
 sheet under Section 224 I.P.C., was
~~therefore~~ placed in the first instance
 before a Justice of the Peace
 (Sir Charles Tothunter), and the
 latter returned the charge sheet
 on the ground that there was no
 prima facie evidence that

The accused was ~~a~~ European British
subject. After the justice of the
place thus disclaimed jurisdiction,
the charge sheet was ~~then~~ placed
before the City Magistrate, Bangalore
who had ~~no~~ reason to believe
that the accused brought before him
was ~~not~~ ^a European British subject.

~~The accused~~ ^{he} did not make a
claim and prove that he was ^a
European British subject. In these
circumstances, the proceedings before
the City Magistrate cannot be said
to have been without jurisdiction.

I am to state further
there is no
material information in the possession
of ^{this} Government ~~does not show~~ that the
accused was ^a European British subject
and that if the accused feels aggrieved
by the order of the City Magistrate, in
proper remedy being taken for him
to take the matter in app

It was the duty of
the accused to have
claimed to be an
European Br. Subject
if he was one
or moved it. But

SUBJECT

.....

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Section Law
File No. 34 - 38
Serial No.

Diary No. of letter replied to

General and Revenue Secretariat
()
the 193

No. P1328/Records.

To The Dist. Magt.
B'lore

Sir,

Date of issue.....5-9-38.....

Signed by.....Mr. BKR......

I am directed to return herewith the entire records, relating to the trial of Maccaran alias Macclaran for an offence under Sec. 224 I.P.C. Received with your letter no. JI-P.R. 76/38-39, dated 23rd Aug: '38 as they are no longer required

List of enclosures.....

Copied by
M
5/9/38

Examined by.....

I have etc
BKR
For Addl. Secy:

D.O.
R.Dis.No. F.641-38
R.O. I



12th September 1938.

Law 34-38-3

*Law Section
102
12/9
102
12.9*

My dear Kesavaiengar

Will you please refer to your demi-official letter No.Pol.
299/Law.34-38-2, dated the 1st September 1938.

I am desired to say that under Article 16 of the Treaty of 1913, no Mysore Court has any jurisdiction to try a European British subject, even if the accused person does not make any claim to be tried as a European British subject. Please see also Mysore Criminal Procedure Code, Section 1(2), and the judgment in Government versus Mr. B.G.Fuller, reported in Mysore Law Reports X, page 281. In these circumstances, I am to enquire what was the evidence before the Justice of the Peace which led him to believe that Laccaron was not a European British subject, (please see Criminal Procedure Code Section 4(i)) and to refer the case to the City Magistrate. Further, if there was evidence that he was not a European British subject, I am to enquire whether the evidence showed that he was not a non-British European, so that, under the existing arrangements the sanction of the Hon'ble the Resident was not necessary before proceedings against him were instituted in the Bangalore City Magistrate's Court.

*Yours sincerely,
A. R. R. R.*

B. T. Kesavaiengar, Esq., B.A.,
Chief Secretary to the Government of
His Highness the Maharaja of Mysore.

G. R. S. App. F. G. 3.

GENERAL AND REVENUE
SECRETARIAT.

(Continuation sheet draft form.)

200/1320. P1529 & 16.9.38

To

The S.M. Bangalore.

Subject :- Trial Of Mallaram
alias Maclaren.

Sir,

I am directed to intimate
reference to the Correspondence
ending with this Office
letter No P 1328 / Law 34-38
of 5.9.1938 on the above
subject and to enquire
whether ^{there was any} the evidence ^{before me} showed
that the accused Mallaram
was ~~was~~ a non-British ^{European} subject
and if so, why the Govt
was not addressed in the
matter as required under the
~~Criminal~~ Rules in force (vide
page 149 of the Criminal Rules
of practice Vol I)

The favour

Reply is requested.

The entire records of the
Case may kindly be sent
to this office along with
Your reply.

22-11-15

D.O. No. P1530/Sec. 1
8-16-9-38.

G. R. S. App. F. G. 3.

GENERAL AND REVENUE
SECRETARIAT.

(Continuation sheet draft form.)

Dear Sir Charles Tadhams,

I am desired to state that Govt. understand that a Charge Sheet was placed before you by the Bangalore City Police against one Maccaram alias Maccaram for an offence under Section 224 I.P.C. and that the said Charge Sheet was returned by you on the ground that there was no prima facie evidence that the accused was an European British Subject. The Charge Sheet was ^{subsequently} therefore placed before the City Magistrate Bangalore and the accused was convicted of the offence.

I am ^{in this connection} to enclose herein a copy of the Record

After ~~the~~ R Dis No F 641-38/ RoI

By 12.9.1938 Calling for
information regarding the
evidence that led you to
believe that the accused
Mallanum was not a European
British Subject and to
state that Govt will be
glad to be favoured with
the information required by
the Residency.

Yours sincerely

~~MSR~~
12.9

~~MS~~
12.9

Sir Charles Todhunter K.C.S.G.



1975
P838
Vasanth. Mahaf, SEP. 1938
Mysore

21st September 1938.

G.192/37-38.

Dear Mr. Kesavaiengar,

In answer to your D.O.letter No. P.1530, dated the 16th instant, I write to say that I have no recollection of seeing any charge sheet in the case of Maccaron alias Maclaren.

I do remember that something was said about another offence under section 224 I.P.C., when I was dealing with the case of Herbert Mitchell, which is the subject of my letter No. G.192/37-38, dated the 7th May 1938. But my case diary contains no reference to the matter.

As I have more than once had charge sheets put before me against persons who were not European British subjects, I have made it a practice to require the Police, when they ask me to take cognizance of an offence, to produce some prima facie evidence that the person they wish me to try is a European British subject. If they presented a charge sheet in the case of Maccaron alias Maclaren, no doubt I followed the same procedure.

In other words, the position was, not that I had evidence



-2-

that led me to believe that Maccaron alias Maclaren was not a European British subject, but that no evidence was offered me, beyond his equivocal name, to the effect that he was such a subject.

Yours sincerely,

G. H. M. S.

In all future communications

please quote

No. J.1.P.R. 116/38-39
Enc. 1 file of records.

Tel. Address.—"DEPCOM"

Post Box No. 34.

1993
OFFICE OF THE DISTRICT MAGISTRATE
BANGALORE DISTRICT.

Dated, Bangalore, the 23rd Septr. 1935

FROM

Hyder Ali Khan Esq.,
District Magistrate, I/C.,
Bangalore District.

TO

B.T. Kesavaiah Esq., B.A.,
Chief Secretary,
to the Government of Mysore.
Bangalore.

SIR,

Subject:— Trial of Maccaron alias Maciaren and
enquiring whether there was any evidence
before the City Magistrate that the accused
was a Non British European Subject etc.

-0-

With reference to your letter No.1529 dated
16th instant, on the above subject, I have the honor
to forward, herewith, a copy of letter No.Nir dated
22nd instant received from the City Magistrate on the
said subject for favour of information. There does
not appear to be any evidence before the City Magistrate
that the accused Maccaron was Non-British European
Subject. The connected records of the case (C.C.No.
1201/37-38 on the file of the City Magistrate, Bangalore
are herewith sent for reference and return as desired.

I have the honor to be,

Sir,

Your most obedient servant,


Deputy Commissioner I/C.,
Bangalore District.

Letter No. Nil dated 22-9-38 from the City Magistrate, Bangalore, to the District Magistrate, Bangalore.

-J-

With reference to your office telephone message received just now, I have the honor to state that the charge sheet for an offence under section 224 I.P.C. was first placed before the Justice of the Peace against accused Maccaron on 3-5-38 by the Police Sub Inspector of A.2. Station, Bangalore, and the same was returned to him stating that there was no prima facie evidence to show that he was an European British Subject (vide flag 'a'). On this the same charge sheet was presented before this court on 5-5-38. The accused also did not again claim to be tried as a European ^{British} Subject. In these circumstances he was tried as any other ordinary prisoner according to law. The records of the above case are herewith submitted as desired.

-J-

'CCPY'



DEPUTY COMMISSIONER I/C.,
Bangalore District.

T.M.C.

D. O. No. P Camp 19 / Enc: one file Dated Bangalore, 3rd October 1938

Subject:- Case against Maccaron alias Macclaran for an offence under Section 224 Indian Penal Code.

With reference to your D.O. letter No.G.192/37-38 dated 21st September 1938, on the above subject, I am desirous to forward herewith the entire records in C.C.No.1201/37-38 on the file of the City Magistrate, Bangalore (Government -vs- Maccaron alias Macclaran) for favour of perusal of the charge sheet (Flag. O) and to state that Government will be glad to be favoured with your further remarks, if any.

Sir Charles Todhunter, K.C.S.I., J.P.,
Private Secretary to His Highness
the Maharaja of Mysore, Mysore.

D.O. No. P camp 27

Law 34-38-4

Subject: - Case against Maccaron
alias Macclaran for an offence
under Sec: 224 I.P.C.

Dear Sir Charles Goddard,

With reference to your
D.O. letter no. G 192/37-38, dated
21st September 1938 on the above
Subject, I am desirous to
forward herewith the entire
records in C.C. No. 1201/37-38
on the file of the City Magistrate,
Bangalore (Govt v Maccaron &
Macclaran.) for favour of
perusal of the Charge Sheet
(Flag O), and to state that
Govt will be glad to be
favoured with your further
remarks, if any.

Yours Sincerely.



2174238
P 238
Vasanth Mahal,

Mysore,

8th October 1938.

Part of Jaw Sect
MB
9/10/38
10/10
Dear Mr. Kesavaiah,

aw 34-38-5

Many thanks for your D.O. letter No. Camp 19, of the 3rd instant with which you have sent me the records of the case against Maccaron alias Macclaran for any further remarks which I may have to make.

As I have already stated in my letter of the 21st September last I have no recollection of seeing the charge sheet in this case. If I did so, I should in all probability have asked the Police for evidence that the man was a European British subject before proceeding, because I have found that they do not always examine this question sufficiently closely.

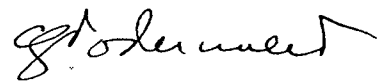
From the Residency letter it appears that the view is taken there that the burden of proving that a man placed before a J.P. by the Police for trial is not entitled to such trial is upon the J.P. I am not well up in the law in these days, but I venture to doubt whether this is correct. To take the case in question, assuming that the charge sheet was brought to me, the accused certainly was not produced, and the only evidence that he was a European British subject was that he was called by two names, which have a European sound, but neither of which is identifiable as either an English or an Irish name. On my asking for proof that he was a European British subject, the Police appear to have placed him before the City Magistrate, who tried him. It is true that the Mysore Code contains no provision that a European British subject may waive his claim to be tried as such, but since the City Magistrate had no jurisdiction to try a European subject, it was surely for the accused to challenge his jurisdiction. It was also for the City Magistrate, if he saw any evidence that the man was a European British subject, to refuse to try the case, and I venture to suggest that he and not I should be called to explain.

I would further in this connection invite your attention to the difference in the definition of a European British subject between the Mysore and the British Codes. The former includes "any subject of His Majesty the

"the King-Emperor¹ born, naturalised or domiciled in the United Kingdom of
"Great Britain and Ireland" The latter includes "any subject of His Majesty
"of European descent in the male line born, naturalised or domiciled in the
"British Islands". I have not had time to look up the reasons why a charge
was made, but prima facie it looks as if it was because the Republic of Eire
is not included in the United Kingdom. If therefore, Maccaron or Macclaran
was born, naturalised or domiciled in the Republic of Eire, he would not be
entitled to claim trial as a European British subject in Mysore, though he
would be in British India.

May I venture in conclusion to suggest that the question of bringing
the Mysore definition into line with the British Indian definition be taken
into consideration?

Yours sincerely,

A handwritten signature in dark ink, appearing to read "J. D. L. M. S." with a stylized flourish at the end.

Confidential

Draft D.O. P/89/
8 18.10.38

3 Copies

Law 34-38-6

My dear Trevelyan,

Please refer to your demi-official letter No: R.Dis F.641-38/R.O.1 dated 12th September 1938 regarding the case of Maccaron.

I am desired to state that Art. 16 of the Mysore Treaty, section 1, sub-section 2 of the Code of Criminal Procedure and the decision in Government versus Mr. B.G. Fuller (X Mysore Law Reports, 281) are all applicable to cases where an accused person is established to be a European British subject or known to be ~~as~~ such, as a fact, and not to cases where the nationality of the accused is a matter of doubt or where it is not raised at all. ~~The proposition that~~ waiver by the accused does not confer jurisdiction is no doubt correct if the accused is a European British subject. ~~In this connection I am to refer to the decision in the matter of the Mysore Chief in this connection~~ On the other hand, in the case of A.J.T. Halje reported in 8, Mysore Chief Reports, at page 408, [where] it has been held that in a case where it was a matter of doubt as to whether the accused was a European British subject and he failed to prove when called upon that he was ~~as~~ such it cannot be ~~presumed~~ assumed that he was European British subject and it could not be said that the Mysore Magistrate had no jurisdiction to try the case against hi

In Govt v Mr B.G. Fuller
~~it was on which was a~~
case of waiver, it was
held that the magistrate had
no jurisdiction though the accused
was a E.B. subject who waived
his privilege.

Two decisions of the
High Court are referred
to here as the Resident
Magistrate has relied on the
decision in Govt v B.G. Fuller]

In a

~~I am also to refer to~~ the recent decision of the Mysore High Court in the case of Charles Theobald (41, Mysore High Court Reports, page 148) ~~where~~ it has been held as follows:

That ~~the~~ exemption from jurisdiction referred to in the last sentence of sub-section of section ~~of~~ ~~of~~ 1 of Regulation II of 1904 ^{can} ~~applies~~ ² only to a European British subject who is proved to be such and not to one who merely alleges that he is a European British subject or adduces insufficient proof thereof, Such an exemption being in the nature of a special plea ousting ~~all~~ the ordin^{ary} jurisdiction of Courts in Mysore, the onus of proof that he comes under the exemption lies on the person who sets up the claim that he is a European British subject.

In the present case, no prima facie evidence was placed before the Justice of the Peace that the accused was a European British subject, and the Justice of the Peace had no reason to believe that the accused was such. Consequently, he returned the charge-sheet. When a person is placed before a ^{Justice of the Peace} ~~Court~~, there is no presumption that he is a European British subject, ~~or a European any more than that he is an Anglo-Indian.~~ A Justice of the Peace cannot assume jurisdiction as a matter of routine and it is not a correct position that he should see if there is evidence that the man placed before him was not a European British subject. It is for the accused to ^{establish by sufficient evidence} ~~set up and prove~~ that he is ~~entitled~~ to the special treatment. a European British Subject [6 Mad H.C.R 7)

European any more than ^{and} he was an Anglo-Indian.

other case.

1st September 1938 that there is no information

accused was a European British subject.

on the material before him that the accused

will have no objection to ~~remit the sentence~~

Procedure.

Chief Secretary to Govt.

H. Trevelyan, Esq., I.C.S.,
Secretary to the Hon'ble the Resident
in Mysore, B a n g a l o r e.

in the Justice of the Peace Court at
Munich, the accused was placed in
the Bangalore City Jail. The
accused did not raise the issue of
rationality. The issue was not
to think that the accused was non-rational
European any more than he was an Indian.
Consequently, the trial proceeded as in any
other case.

It is already stated in my letter dated
1st September 1936 that there is no information
in the possession of this Government that the
accused was a European or of British
descent. If the British Government is satisfied
on the material before it that the accused
is a European, British subject, the Government
will have no objection to his being tried
under section 401 of the Code of Criminal

So. P189/Law 24-286

§ 18.10.28.

18th October 38

Confidential.

Please refer to your demi-official letter No. R.Dis. 641-38/R.O.I, dated 12th September 1938, regarding the case of Maccaron.

I am desired to state that Article 16 of the Mysore Treaty, section 1, sub-section 2 of the Code of Criminal Procedure and the decision in Government versus Mr. B. G. Fuller (X Mysore Law Reports, 281) are all applicable to cases where an accused person is established to be a European British subject or known to be such, as a fact, and not to cases where the nationality of the accused is a matter of doubt or where it is not raised at all. In Government versus Mr. B.G. Fuller which was a case of waiver, it was held that the Magistrate had no jurisdiction though the accused who was a European British subject waived his privilege. On the other hand, I am to refer to two decisions of the Mysore Courts in this connection. In the case of A.J.T. Halge reported in 8, Mysore Chief Court Reports, at page 408, ~~where~~ it has been held that in a case where it was a matter of doubt as to whether the accused was a European British subject and he failed to prove when called upon that he was such, it cannot be assumed that he was a European British subject and it could not be said that the Mysore Magistrate had no jurisdiction to try the case against him. In a recent decision of

the Mysore High Court in the case of Charles Theobald (Mysore High Court Reports, page 148), it has been held the exemption from jurisdiction referred to in the last sentence of sub-section 2 of section 1 of Regulation II 1904 can apply only to a European British subject who is proved to be such and not to one who merely alleges that he is a European British subject or adduces insufficient proof thereof, and that such an exemption being in the nature of a special plea ousting the ordinary jurisdiction of Courts in Mysore, the onus of proof that he comes under the exemption lies on the person who sets up the claim he is a European British subject.

In the present case, no prima facie evidence was placed before the Justice of the Peace that the accused was a European British subject, and the Justice of the Peace had no reason to believe that the accused was such. Consequently, he returned the charge-sheet. When a person is placed before a Justice of the Peace, there is no presumption that he is a European British subject. A Justice of the Peace cannot assume jurisdiction as a matter of routine and it is not a correct position to say that he should see if there is evidence that the man placed before him was not a European British subject. It is for the accused to establish by sufficient evidence that he is a European British subject (6 Madras High Court Reports 7).

As the Justice of the Peace disclaimed jurisdiction

the charge-sheet was placed before the Bangalore City Magistrate. Even there the accused did not raise the question of his nationality. The Magistrate had no reason to think that the accused was a non-British European any more than that he was an Anglo-Indian. Consequently, the trial proceeded, as in any other case.

There is of course no question that if it is established by sufficient evidence that the accused is a European British subject, the Mysore Magistrate has no jurisdiction. The only question is as to on whom the onus rests, if there is no prima facie evidence. The Mysore High Court and other High Courts have held that the onus rests on the accused.

It is already stated in my letter dated 1st September 1938 that there is no information in the possession of this Government that the accused was a European British subject. But if the Hon'ble the Resident is satisfied on the material before him that the accused is a European British subject, the Government will have no objection to take suitable action under section 401 of the Code of Criminal Procedure.

Yours Sincerely,
MS

H. Trevelyan, Esq., I.C.S.,
Secretary to the Hon'ble the Resident in Mysore,
Bangalore.

D.O.
R.Dis.No. F.641-38
R.O. I



Bangalore,
12th January 1939.

Law 34-38-7

*Protn 12
The point arising
further 8/1/39
11/1/39
12/1/39
by order Kesavaiengar.*

The Resident is unable to accept the arguments contained in your demi-official letter No.P.1891^X dated the 18th October 1938. The interpretation of the Mysore Law and the rulings of the Mysore or other High Courts are in fact irrelevant to the point under discussion. Under Article 16 of the Treaty plenary criminal jurisdiction over European British Subjects in Mysore State vests in the Governor-General in Council. It is the obligation of the Government of Mysore under this article of the Treaty to make such laws as will ensure that European British Subjects are not tried by the State Courts, and if in actual fact European British Subjects were to be tried in the State Courts, it would appear that some amendment of the Mysore Laws was necessary. In the case under reference the mistake appears to have arisen as the result of the action of a Court constituted by the Crown Representative and not by a Court constituted by the Government of Mysore. The Resident does not therefore wish to pursue the matter further, and he is confident that the Government of Mysore, as in the past, will ensure that European British Subjects are not tried in the Mysore State Courts.

Law 34-38-7

Kesavaiengar

Rajasevaprakashta

Mr. B. T. Kesavaiengar, B.A.,

Chief Secretary to the Government of

His Highness the Maharaja of Mysore,

B a n g a l o r e.

IN THE HIGH COURT OF MYSORE AT BANGALORE.

Criminal Side:-

Circular No. 282+ *None*
Dated 4th March 1939

The attention of all Sessions Judges and Magistrates in the States is drawn to Article 16 of the Treaty dated 26th November 1913 between His Highness the Maharaja and the British Government which runs

'Plenary criminal jurisdiction over European British subjects in the said territories shall continue to be vested in the Governor-General in Council, and the Maharaja of Mysore shall exercise only such jurisdiction in respect to European British subjects as may from time to time be delegated by the Governor-General in Council.'

It is the duty of every Judge and Magistrate, whenever any accused person is produced or appears before him for trial or for an inquiry under Chapter III of the Code of Criminal Procedure, to take notice of his name, appearance or statement, and to provide any reason to suppose that

beginning the trial or inquiry.

2. Every Magistrate, before whom a criminal accusation is preferred against a person, whom there is any similar reason to suppose to be a European other than a European British subject or an American, should before taking up the case for trial or inquiry under Chapter XVIII of the Code of Criminal Procedure satisfy himself whether the accused person is such a European or American in order that the provisions of Chapter XXIII of the Criminal Rules of Practice and Circular Orders, Vol.I, may be followed.